

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36133]

Cleveland Commercial Railroad Company, LLC—Amended Lease and Operation
Exemption Containing Interchange Commitment—Norfolk Southern Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to continue to lease and operate approximately 25.3 miles of rail line from Norfolk Southern Railway Company (NSR) between milepost RH 2.2+/- at Cleveland, Ohio, and milepost RH 27.5+/- at Aurora, Ohio.

According to CCR, it first entered into a lease agreement (Original Agreement) with NSR on May 13, 2009. See Cleveland Commercial R.R.—Lease and Operation Exemption—Norfolk S. Ry., FD 35251 (STB served May 29, 2009). On September 15, 2016, CCR and NSR agreed to amend the Original Agreement (1st Agreement Amendment) to extend the agreement's termination date an additional six years, through December 31, 2025, and to make other changes.¹ CCR states that the 1st Agreement Amendment will take effect on the effective date of this notice of exemption.

¹ CCR filed a confidential, complete version of the 1st Agreement Amendment with its notice of exemption to be kept confidential by the Board under 49 C.F.R. § 1104.14(a) without the need for the filing of an accompanying motion for protective order under 49 C.F.R. § 1104.14(b).

CCR states that the 1st Agreement Amendment contains an interchange commitment in the form of lease credits. According to CCR, these credits were part of the Original Agreement, which CCR sought in negotiations to afford it greater financial flexibility to, among other things, improve the line's infrastructure. CCR states that the lease agreement does not prohibit it from interchanging with other carriers and it does not set forth terms under which CCR may interchange traffic with third parties. CCR states that it regularly interchanges traffic with Wheeling & Lake Erie Railway Company (W&LE) and that CCR's lease and operation of the subject line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR and W&LE relationship.² As required under 49 C.F.R. § 1150.43(h)(1), CCR has disclosed in its verified notice that the Original Agreement, as modified by the 1st Agreement Amendment, affects the interchange points with NSR at a track in the vicinity of Von Willer Yard in Cleveland and with W&LE at Falls Junction in Glenwillow, Ohio. CCR has provided additional information regarding the interchange commitment as required by § 1150.43(h).

CCR also certifies that its projected annual revenues as a result of the transaction will not result in CCR's becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

The transaction may be consummated on or after August 30, 2017, the effective date of the exemption (30 days after the exemption was filed).

² See Cleveland Commercial R.R.—Change in Operators Exemption—Wheeling & Lake Erie Ry., FD 34521 (STB served Aug. 6, 2004).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 23, 2017 (at least 7 days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36133, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave., N.W., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our website at “WWW.STB.GOV.”

Decided: August 11, 2017

By the Board, Rachel D. Campbell, Director, Office of Proceedings.